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DECEIT — GENERAL REQUISITES AND DEFENSES — REPRESENTATIONS OF VALUE AS FACT. — The defendant induced the plaintiff to buy her hotel property by making representations, known to be false, that it was worth $35,000 and was a "big paying proposition." In fact the property was worth about $17,000. The plaintiff was particularly ignorant and inexperienced in business matters, as the defendant knew. The court charged that the plaintiff could recover if the misrepresentations were intended and understood by the parties as assertions of fact. *Held*, that this is not error. *Adan* v. *Steinbrecher*, 133 N. W. 477 (Minn.).

As a general rule misrepresentations of value are regarded as mere statements of opinion, "seller's talk," and not actionable. *Chrysler* v. *Canaday*, 90 N. Y. 272. But under some circumstances a statement ordinarily one of opinion may be a statement of fact. *Andrews* v. *Jackson*, 168 Mass. 266, 47 N. E. 412. So an action is allowed where the vendor has special means of knowledge which the vendee has not. *Shelton* v. *Healy*, 74 Conn. 265, 50 Atl. 742. Or where the value is difficult of ascertainment, and can be known only to an expert. *Picard* v. *McCormick*, 11 Mich. 68. Or where the defendant is in a position of trust or confidence. *Hauk* v. *Brownell*, 120 Ill. 161, 11 N. E. 416. See *Gustafson* v. *Rustemeyer*, 70 Conn. 125, 133, 39 Atl. 104, 106. Or where the vendor dissuades the vendee from making inquiries which would disclose the truth. *Nysewander* v. *Lowman*, 124 Ind. 584, 24 N. E. 355. Whether in a particular case the words are a statement of fact or of opinion must depend largely on the circumstances of the case, with the broad general principle that the law does not permit misrepresentations made with intent to deceive intending purchasers. *Cf. Watson* v. *Molden*, 10 Idaho 570, 582, 79 Pac. 503, 507. The principal case accords with the modern tendency to hold the doctrine of "seller's talk" inapplicable where the misrepresentation of value is made and acted on as an affirmation of fact. *Crompton* v. *Beedle*, 83 Vt. 287, 75 Atl. 331; *Hetland* v. *Bilstad*, 140 Ia. 411, 118 N. W. 422.

EVIDENCE — CHARACTER — SPECIFIC ACTS TO SHOW CHARACTER OF DECEASED ON ISSUE OF SELF-DEFENSE. — Evidence was excluded that the deceased had said that he was a "desperado nigger" and had been sentenced to the state penitentiary. *Held*, that this is not error. *Coulter* v. *State*, 140 S. W. 719 (Ark.).

When there is some evidence of self-defense, the violent character of the deceased, even if unknown to the defendant, may probably be used to show who was the aggressor. See 1 WIGMORE, EVIDENCE, § 63. Threats by the deceased may also be used for this purpose. *Wilson* v. *State*, 30 Fla. 234, 11 So. 556; *State* v. *Turpin*, 77 N. C. 473. But particular acts of violence should not be admissible for this purpose unless closely connected with the act charged. *People* v. *Gaimari*, 176 N. Y. 84, 68 N. E. 112; *State* v. *Sale*, 119 Ia. 1, 92 N. W. 680. But *cf. State* v. *Beird*, 118 Ia. 474, 92 N. W. 694. When the issue of self-defense is raised and the accused knew of the violent character of the deceased, this may be used to show that the former acted under the apprehension of danger. *Monroe* v. *State*, 5 Ga. 85, 137; *Horlock* v. *State*, 43 Tex. 242. Threats by the deceased known to the accused may also be used for this purpose. *Powell* v. *State*, 52 Ala. 1; *State* v. *Burton*, 63 Kan. 602, 66 Pac. 633. As to whether specific acts of violence by the deceased known to the accused may be admitted for this purpose, authorities differ. *People* v. *Harris*, 95 Mich. 87, 54 N. W. 648; *People* v. *Thomas*, 67 N. Y. 218; *Alexander* v. *Commonwealth*, 105 Pa. St. 1. But since there is no allegation in the principal case that the defendant knew of the facts excluded, the decision seems sound. Nor do the statements show the mental attitude of the deceased in regard to the crime charged sufficiently to claim admission on that ground. *Cf. Commonwealth* v. *Trefethen*, 157 Mass. 180, 31 N. E. 961.

EVIDENCE — PROOF OF FOREIGN LAW — APPLICATION OF LEX FORI. — The plaintiff brought an action to recover for personal injuries suffered in Cuba through the defendant's negligence. There was no evidence of Cuban law. *Held*, that the plaintiff is not entitled to recover. *Cuba R. Co.* v. *Crosby*, U. S. Sup. Ct., Jan. 9, 1912.

The court holds that the law of the forum should not be applied, since there is no general presumption that the Cuban law is the same as the common law. This decision reverses the decision in the Circuit Court of Appeals, criticized in 23 HARV. L. REV. 64.

EXECUTION — REMEDY OF BONÂ FIDE PURCHASER OF PROPERTY TO WHICH JUDGMENT DEBTOR HAS NO TITLE. — The sheriff sold on execution two horses which were not the property of the judgment debtor. The owner successfully replevied the horses from the *bonâ fide* purchaser. *Held*, that the purchaser may recover from the judgment creditor in an action for money had and received. *Dresser* v. *Kronberg*, 81 Atl. 487 (Me.).

The doctrine of *caveat emptor*, admittedly applicable to execution sales, has appeared to text writers to be inconsistent with any right of recovery by the purchaser, even though he acquires absolutely no title. See FREEMAN, VOID JUDICIAL SALES, 4 ed., § 49; KLEBER, VOID JUDICIAL AND EXECUTION SALES, § 469. However, recovery from the judgment debtor is commonly allowed on the ground that the purchaser has paid money to the debtor's use by discharging his debt. *Julian* v. *Beal*, 26 Ind. 220; *M'Ghee* v. *Ellis*, 4 Litt. (Ky.) 244. Neither this nor the doctrine of the principal case, it is submitted, is inconsistent with the doctrine of *caveat emptor*. The right of the judgment creditor is against the debtor's property, and the writ is directed solely against such property. *Heberling* v. *Jaggar*, 47 Minn. 70, 49 N. W. 396; *Burwell* v. *Herron*, 16 So. 356 (Miss.). The purchaser relies on what is professed, namely, the sale of the debtor's right in the chattel. If the debtor has no right, then there is a total failure of consideration, and so the money paid is not properly applicable to the debt. The contrary view is inequitable toward the debtor because depressing prices at execution sales. The principal case provides for a wholly equitable result, for if recovery by the purchaser is allowed against the judgment creditor, the creditor may thereupon have his judgment against the debtor vacated and a new execution awarded on the ground that the debt has never been paid. *Magwire* v. *Marks*, 28 Mo. 193; *Bressler* v. *Martin*, 133 Ill. 278, 24 N. E. 518. But *cf. Thomas* v. *Glazener*, 90 Ala. 537, 8 So. 153. So, it seems, the principal case is correct. See *Sanders* v. *Hamilton*, 3 Dana (Ky.) 550, 552. *Contra, England* v. *Clark*, 5 Ill. 486; *Lewark* v. *Carter*, 117 Ind. 206, 20 N. E. 119. If, however, there are intervening circumstances making recovery inequitable, *e. g.* bankruptcy of the debtor, then the purchaser should not be allowed to recover.

HABEAS CORPUS — REVIEW OF HABEAS CORPUS PROCEEDINGS. — From an order in *habeas corpus* proceedings, discharging a prisoner, error was brought. *Held*, that the order is not reviewable. *Wisener* v. *Burrell*, 28 Okl. 546, 118 Pac. 999. See NOTES, p. 460.

HUSBAND AND WIFE — RIGHTS OF WIFE AGAINST HUSBAND AND IN HIS SEPARATE PROPERTY — RIGHT TO BE REIMBURSED FOR EXPENDITURES FOR NECESSARIES. — The plaintiff, a married woman, having been abandoned by her husband without just cause, and being unable to procure necessaries on his credit, purchased them with the proceeds of her labor and of her separate estate. She sought to recover from her husband the amount so expended. *Held*, that the plaintiff can recover. *De Brauwere* v. *De Brauwere*, 203 N. Y. 460.